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November 30, 2007

Brian Baird, Assistant Secretary for Ocean and Coastal Policy
California Resources Agency

Kathleen Drew, Executive Policy Advisor
Washington Governor's Office

Jessica Hamilton, Natural Resources Policy Advisor
Oregon Governor's Office

Via email: comments@westcoastoceans.gov

Re: West Coast Governor's Agreement on Ocean Health Draft Action Plan

Dear Mr. Baird, Ms. Drew, and Ms. Hamilton:

On behalf of Heal the Bay, a southern California based non-profit organization with over 12,000 members dedicated to making Santa Monica Bay and Southern California coastal waters safe and healthy for people and marine life, we thank you for the opportunity to comment on the West Coast Governor's Agreement on Ocean Health Draft Action Plan ("draft plan"). We have reviewed the draft plan and are generally supportive of its intent to protect the health of ocean and coastal ecosystems along the entire West Coast; however we are concerned that many of the actions will not result in measurable or tangible outcomes. We are also concerned by the absence of detailed timelines and associated benchmarks with which to measure achievement of the actions outlined in the draft plan. We submitted comments in August 2007 urging you to include measureable actions, benchmarks, and timelines in the pending action plan (see Attachment A), but unfortunately the draft plan falls short of such detail in most of the priority areas. We urge you to incorporate these elements in your final plan. Your leadership through the actions that emerge from the West Coast Governors Agreement on Ocean Health will guide the way critical ocean and coastal challenges are addressed on a regional and potentially national level.

We are encouraged by the inclusion of measures to address polluted runoff and marine debris in the draft plan. Yet, to be effective, these actions must be explicitly tied to measureable outcomes. We provide specific recommendations below on how to strengthen the polluted runoff and marine debris actions. We are also concerned that the draft plan does not address the need to improve the health of west coast fisheries, nor does it promote innovative tools such as marine protected areas ("MPAs") for restoring and conserving living marine resources. Some west coast states are currently engaged in

efforts to create MPAs off their coasts. Extending these efforts to tri-state action by implementing a region-wide network of MPAs would serve to protect sensitive marine and coastal resources through much of the California Current and provide greater resource protection value than approaching the implementation of MPAs on a state-by-state basis.

Polluted Runoff

Action 1.1 sets forth the important first step of facilitating funding for water quality improvements along the West Coast, yet it stops short, as it fails to ensure that monitoring is sufficient and public health is adequately protected. Presently, local, state, and federal water quality monitoring programs along the west coast are poorly coordinated. Standardized beach water quality monitoring does not exist and there is no means to compare monitoring results between states, or even counties. As detailed in our previous letter, we urge you to include an action within the Polluted Runoff section that commits California, Washington, and Oregon to establishing standardized beach water quality monitoring protocols. This action should be achieved within a timely manner; we recommend the timeline for completion of this action be set for a year after the adoption of the action plan. Such action would synchronize the issue of uncoordinated and episodic beach water quality monitoring, and perhaps influence the adoption of standardized beach water quality monitoring at a national level.

We applaud the prioritization of Low Impact Development ("LID") in Action 1.2; however, we urge you to strengthen this action. As stated in the draft plan, LID efforts are essential to successfully reduce polluted runoff from growing urbanized areas. Presently the draft plan focuses solely on an incentive-driven approach to LID, yet to truly address the issue of polluted runoff, LID requirements should be adopted in California, Oregon, and Washington for all new developments in coastal watersheds.

Marine Debris

Action 1.4 addresses the issue of marine debris. As previously stated, this action fails to set forth a specific timeline with associated benchmarks for its achievement. These elements must be included in the final action plan to ensure that marine debris reductions are realized in a timely manner.

We are also concerned about the large focus of this action on establishing a baseline estimate of marine debris along the west coast. Marine debris is prevalent in our coastal waters. Despite increasing worldwide efforts to protect water quality and global treaties to prevent dumping at sea and to minimize land-based sources of pollution, the quantity of marine debris in the world's oceans is increasing. The presence of trash in coastal and ocean waters along the west coast has been researched extensively. Additional studies are not needed to determine its presence or abundance. Instead, the West Coast Governors' collective efforts would be better spent on setting target reductions and an

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associated plan to achieve these targets. We understand the need for a baseline upon which to determine the relative change in the quantity of trash; however this effort can be accomplished without embarking on a new study. For example, the Los Angeles River Trash Total Maximum Daily Load, which sets the goal of achieving zero trash in the Los Angeles River watershed by 2015, integrates the calculation of a baseline while setting forth a plan to reduce trash with interim benchmarks. The baseline is founded on existing data from cities and counties. We urge you to take a similar approach in setting target goals for marine debris reduction. We further urge you to build upon the California Ocean Protection Council resolution on marine debris with the West Coast Governors Agreement Action Plan by integrating goals for marine debris reduction within 1 year of adoption of the Action Plan to be achieved by no later than 2015 for west-coast North America.

Additional efforts are underway in the west coast states to reduce and prevent marine debris. In October 2007, Governor Schwarzenegger signed AB 258 into law, which requires that all plastics manufacturers implement best management practices to control against loss of pre-production plastic pellets at their facilities. We urge you to use this as model legislation for Oregon and Washington and implement laws building upon AB 258 to ensure that pre-production plastic pellets are controlled in Oregon, Washington, and California.

Conclusion

Thank you for the opportunity to comment on the West Coast Governor's Agreement on Ocean Health Draft Action Plan. Please contact us if you have any questions regarding our comments and recommendations at 310.451.1500.

Sincerely,

Sarah Abramson
Director of Coastal Resources

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Appendix A

August 2, 2007

The Honorable Governors Schwarzenegger, Kulongoski, and Gregoire
Attn: Ms Amy Boone, Ocean and Coastal Policy Analyst
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Via email: amy.boone@resources.ca.gov

Re: West Coast Governor's Agreement on Ocean Health Discussion Paper

Dear Governor Schwarznegger, Governor Kulongoski, and Governor Gregoire:

On behalf of Heal the Bay, a Santa Monica, California based non-profit organization with over 12,000 members dedicated to making Santa Monica Bay and Southern California coastal waters safe and healthy for people and marine life, we thank you for the opportunity to comment on the West Coast Governor's Agreement on Ocean Health Discussion Paper. We have reviewed the Discussion Paper and are supportive of its focus on prioritizing clean coastal waters and beaches comprehensively across the entire west coast. We encourage you to follow-up on this with a dedicated plan to improve ocean health; one that incorporates specific actions with timelines for completion and benchmarks with which to measure achievement of these actions. This type of planning document will serve as an outline for delineation of the goals of the agreement for ocean health and a checklist to track accomplishments. To this end, we have outlined specific actions below that we recommend you prioritize within the plan to reduce marine debris and improve water quality collectively across the west coast.

1. **Adopt Target Goals for Marine Debris Reduction in Alignment with the Ocean Protection Council's Marine Debris Resolution**

Since the 1970's, marine debris has been widely recognized as a threat to the marine environment. Despite increasing worldwide efforts to protect water quality and global treaties to prevent dumping at sea and to minimize land-based sources of pollution, the quantity of marine debris in the world's oceans is increasing. In the North Pacific it has tripled over the last decade, and the majority of this debris is made of plastic material. Sixty percent to eighty percent of all marine debris, and ninety percent of floating debris, is comprised of plastic. Once in the ocean, plastic persists in the marine environment for hundreds of years or longer without biodegrading, and poses a significant threat to marine life. More than 1 million seabirds, 100,000 marine mammals, and countless fish - some of which are threatened or endangered species under California or federal law - are killed annually in the North Pacific from ingesting or becoming entangled in marine debris. In addition, plastic and other debris litters our beaches, and

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threatens the west coast's ocean-dependent, tourism-oriented economy. Not only is cleaning up this pollution costly to taxpayers, but beachgoers and tourists are likely to avoid beaches strewn with trash, which impacts local coastal economies.

We urge you to prioritize specific actions in your action plan to prevent and reduce marine debris. We support the potential action outlined in the Clean Coastal Waters and Beaches section of your Discussion Paper that calls for the establishment of region-wide goals for marine debris reduction. We urge you to implement this action by setting target reductions for specific items that are commonly found as marine debris; these target reductions should be paired with a detailed timeline for completion and benchmarks for which to gauge achievement. We also urge you to work collectively to accomplish these reductions. Specifically, we recommend you set target reductions for single-use plastic packaging, plastic bags, derelict fishing gear, pre-production plastic pellets (commonly referred to as "nurdles"), cigarette butts and plastic lids, as these are items that are frequently found on coastal beaches and in west coast waters. Further, efforts have already begun in the west coast states to reduce and prevent marine debris, including the recent adoption of a marine debris resolution by the Ocean Protection Council. We urge you to use this resolution as a model for west coast action on marine debris. To be consistent with the Ocean Protection Council resolution on marine debris, we urge Oregon, Washington, and California to collectively create, by January 1, 2008, goals for marine debris reduction achieved by no later than 2015 for west-coast North America.

According to US EPA, the amount of single-use food packaging generated in our society is measured in the millions of tons, and virtually all of this waste is currently littered or landfilled. Consistently, studies by government agencies have shown single-use food packaging to be one of the largest net contributors to litter, both because of its highly disposable nature and its tendency to be blown out of receptacles and landfills. Single-use plastic food containers and plastic bags are commonly found as trash on west coast beaches and in coastal and open ocean waters. Plastic food containers and wrappers were the second most abundant category of trash collected in the 2006 International Coastal Cleanup Day beach cleanups, while plastic bags were the single most abundant item collected in the associated underwater cleanups.[1] Some cities in California have begun to address these issues by banning the most offensive forms of single-use food-associated litter, including expanded polystyrene food containers[2] and plastic bags[3]. Actions like these will greatly reduce the influx of single-use plastic litter to coastal and marine environments.

Abandoned, lost and discarded fishing gear can present safety, liability, nuisance and environmental impact issues in marine waters. Derelict fishing gear also poses a major problem to marine life as it can

[1] International Coastal Cleanup Day Report 2006, pp. 8-9.

[2] City of Santa Monica, City of Malibu, City of Capitola, City of San Francisco, City of Calabasas, City of Huntington Beach, City of West Hollywood, City of Aliso Viejo, City of San Juan Capistrano, City of San Clemente, City of Berkeley, City of Palo Alto, City of Oakland, County of Ventura, County of Santa Cruz, & County of Sonoma have banned expanded polystyrene.

[3] City of San Francisco and City of Oakland have banned plastic bags.

drift thousands of miles trapping and killing fish, sea turtles, marine mammals, and other marine life. The California Derelict Fishing Gear Removal Pilot Project retrieved nearly 10 tons of derelict fishing gear, including 246 commercial lobster traps, during only a 30-day removal project in 2006.[4] The State of Washington also has a very effective derelict fishing gear removal program; 4,409 derelict pots and 157 derelict nets were removed from July 2002 to June 2007 over149 diver days of removal.[5] Comprehensive programs like these, accompanied by target goals for derelict fishing gear reduction, will greatly help reduce the amount of lost and abandoned fishing gear present in west coast marine waters.

Pre-production plastic pellets and resin materials also comprise a large portion of the trash on west coast beaches. Industrial discharge of these nurdles originates from inland urban areas when released during the transport, packaging, and processing of plastics. These materials eventually migrate to coastal waterways and beaches. A recent study conducted on Orange County (California) beaches found that these pellets comprised 98% of the beach debris collected.[6] In aquatic and marine environments, nurdles mimic fish eggs and are easily confused by wildlife as food. These pellets can also carry micropollutants, both chemicals added to plastics to achieve specific properties (e.g. flexibility or rigidity) and pollutants attracted to nurdles from ambient seawater. For example, concentrations of PCBs and DDE on nurdles collected from Japanese coastal waters were found to be up to 1 million times higher than the levels detected in surrounding seawater.[7] A comprehensive approach to preventing the discharge of nurdles into the marine environment must be taken along the entire west coast to effectively reduce the presence of this offensive litter in coastal and marine waters.

Cigarette butts are also found in high abundance on beaches worldwide; over 1.9 million cigarette butts were collected during International Coastal Cleanup Day in 2006.[8] Chemicals from discarded cigarette butts are capable of leaching into surrounding water where they can harm aquatic life. Southern California cities, including Los Angeles and Santa Monica, have adopted no smoking laws on public beaches in part to reduce cigarette butt pollution. We urge you to take a similar approach in reducing cigarette butt litter on west coast beaches.

Bottle caps from water, soda, and other single-use beverage bottles also comprise a large portion of the trash on beaches. In Orange County (California) alone, over 88,500 plastic caps and lids were collected in

[4] SeaDoc Society, Gilardi, Kirsten. California Derelict Fishing Gear Pilot Project: Final Report to the State Coastal Conservancy, March 1, 2007.

[5] Northwest Straights Marine Conservation Initiative, Derelict Fishing Gear Removal Program, data available at: http://www.nwstraits.org/PageID/188/default.aspx.

[6] S. Moore et al., (2001) "Composition and Distribution of Beach Debris in Orange County, California," Marine Pollution Bulletin 42.3: 241-245.

[7] Y. Mato et. al., (2001) "Plastic Resin Pellets as a Transport Medium for Toxic Chemicals in the Marine Environment" Environ. Sci. Technol. 35:318-324.

[8] International Coastal Cleanup Day Report 2006, pp. 8-9.

a beach debris study conducted during August and September of 1998.[9] While many beverage bottles are recyclable, bottle caps typically are not. These caps pose a threat to marine life that often mistake them for food. Large seabirds such as Laysan and Black-footed albatrosses frequently ingest bottle caps. Necropsies have indicated bottle caps to be the cause of death in some seabirds, as they were blocking the esophagus and pylorus.[10] Region-wide efforts to reduce the amount of bottle caps on west coast beaches will help protect seabirds and other sensitive marine life from this dangerous debris.

We also urge you to implement a phased ban of the most toxic types of plastic packaging consistent with the Ocean Protection Council resolution on marine debris. We recommend the west coast states collectively consider restricting the marketing and distribution of harmful plastic materials and additives, including phthalates, bisphenol-A, polystyrene, perfluorooctanoic acid, alkylphenols and polyvinyl chloride.

The US Commission on Ocean Policy recommends that actions be taken nationally and locally to reduce and prevent marine debris. In December 2006, the Marine Debris Research, Prevention, and Reduction Act was signed into law in the United States, establishing a program within National Ocean and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety. This program may be helpful in serving as a funding stream to implement some west coast wide programs to reduce and prevent marine debris.

2. Support Federal BEACH Act Bills HR 2537 (Lautenberg) and S 1506 (Pallone)

Congress is currently considering two bills – HR 2537 (Lautenberg) and S 1506 (Pallone) - that would amend the Beaches Environmental Assessment and Coastal Health Act of 2000 ("BEACH Act"), strengthening it to include a substantial and necessary funding stream to facilitate program implementation, improved monitoring, source identification of fecal bacteria, and water pollution prevention efforts. To date, only $62 million (over the past seven years) has been made available for this program, and the results have been predictable – far too many heavily visited beaches are not monitored or are monitored infrequently and inadequately. Also, in many states, the public is poorly informed about water quality at their local beaches. Unfortunately, inadequate monitoring and poor public health notification can lead to the unknowing exposure of millions of swimmers to unacceptable health risks, including gastrointestinal illness, and upper respiratory illness. In comparison, California has surpassed national-level efforts to clean up beaches by implementing the Clean Beach Initiative, created in part by Heal the Bay, which has allocated over $100 million to clean up the state's most polluted beaches over the past six years. Clearly more funding is needed at the federal level to facilitate effective

[9] S. Moore et al., (2001) "Composition and Distribution of Beach Debris in Orange County, California," Marine Pollution Bulletin 42.3: 241-245.

[10] Pierce et. al., (2004) "Obstruction and Starvation Associated with Plastic Ingestion in a Northern Gannet *Morus Bassanus* and a Greater Shearwater *Puffinus Gravis*," Marine Ornithology 32: 187-189.

implementation of the BEACH Act. A day at the beach should not be a health threat. We urge your expeditious support of this legislation; it is consistent with the Clean Coastal Waters and Beaches section of your Discussion Paper and will greatly improve beach water quality at the national level. Your support will greatly help these bills (HR 2537 and S 1506) move through Congress.

Further, we urge you to recommend amendment of these bills to include the development of a baseline beach monitoring and public notification program for use to determine the eligibility of states for BEACH Act grant funding. The program should include criteria for which beaches must be monitored based on visitorship and proximity to potential pollution sources, minimum monitoring frequency, sample collection requirements, analytical methods, beach closure requirements for sewage spills, and public notification requirements. If a state does not utilize a program that meets or exceeds the baseline program, then they should not be eligible for BEACH Act funds. The United States Environmental Protection Agency's 2002 monitoring and assessment performance criteria are generic, advisory in nature, and act only as guidance. This amendment is critical to ensure that monitoring results between states and even counties are comparable. For example, water quality data from Florida, New Jersey, Hawaii or California are currently incomparable because the programs are all so different. Using a metric such as number of beach closures or postings to compare counties and states only provides meaningful information if monitoring programs are comparable. Eligibility criteria are commonly used in Federal grant programs to ensure high quality projects. A similar incentive for effective and protective monitoring and public notification programs should occur for BEACH Act funding. Amending HR 2537 and S 1506 to include this element would help synchronize the issue you address in your Discussion Paper of uncoordinated and episodic beach water quality monitoring, and will greatly improve these bills.

3. Adopt Strong Health-based Standards for Beach Water Quality Criteria Across California, Oregon, and Washington

Your Discussion Paper notes that local, state, and federal water quality monitoring programs along the west coast are not well coordinated. Many are episodic rather than continuous, most are chronically under-funded, and can often be slow to report data and synthesize findings. These weaknesses in water quality monitoring often threaten beachgoer health, and need to be improved. We urge you to adopt strong, consistent health-based standards for beach water quality criteria across California, Oregon, and Washington.

We believe that a tri-state agreement adopting health-based standards for beach water quality criteria should be developed to support and improve regional programs for monitoring and improvement of coastal water quality. To adequately protect beachgoer health, it is imperative that water quality criteria are as directly linked to health effects as possible (based on rigorous epidemiological studies). It is also important that the criteria are scientifically defensible for application in the varying climatic conditions along the west coast. These criteria should also be compatible with the Clean Water Act §304(a) criteria needs (as amended by the BEACH Act), including water quality assessment for public notification at beaches in a timely manner, assessment for impaired waters listings, development and implementation of

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total maximum daily load (TMDL), and development of National Pollution Discharge Elimination System (NPDES) permits. These criteria should also provide adequate protection of sensitive and susceptible populations including children and immunocompromised individuals. Adoption of regional water quality criteria will not only protect public health, but serve as a model for improved water quality protection nationwide.

4. Implement a Network of Marine Protected Areas Throughout California, Oregon, and Washington waters

We urge you to implement a network of marine protected areas along the west coast, which features a series of high protection no-take reserves. Marine reserves complement existing ocean and coastal management efforts and are a tool in our movement towards ecosystem-based management. Many marine life populations and habitats along the west coast are degraded. Marine reserves have been scientifically proven to protect and enhance degraded ecosystems, including kelp forests and fish communities. Many animals and plants in reserves tend to be more abundant, grow larger, and reproduce more than their counterparts outside reserves.[11] In implementing a network of marine protected areas and reserves, it is imperative that the system be founded in science. The size and spacing of these marine reserves must provide connectivity for marine life populations to be effective. It is also important that these reserves protect a variety of habitat types along the west coast. Implementing a network of marine reserves along the west coast would greatly help protect our important and sensitive marine and coastal resources.

Conclusion

Thank you for the opportunity to comment on the West Coast Governor's Agreement on Ocean Health Discussion Paper. We look forward to working with you as California, Oregon, and Washington move forward in developing actions to implement this landmark agreement. Please contact us if you have any questions regarding our comments and recommendations at 310.451.1500.

Sincerely,

Sarah Abramson, MESM
Staff Scientist

Mark Gold, D.Env
President

[11] B. Halpern, The Impact of Marine Reserves: Do Reserves Work and Does Reserve Size Matter? *Ecological Applications,* 13(1) Supplement, 2003, pp. S117-S137.